

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

LARRY HENDERSON,

Plaintiff,

v.

U.S. MARSHALS SERVICE, et al.,

Defendants.

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No. 4:15CV399 HEA

MEMORANDUM AND ORDER

Plaintiff, a prisoner seeking leave to proceed in forma pauperis, brings this action under 42 U.S.C. § 1983 for alleged deliberate indifference to his serious medical needs. Having reviewed plaintiff's financial information the Court assesses a partial initial filing fee of \$7.67, which is twenty percent of his average monthly deposit. See 28 U.S.C. § 1915(b).

Under 28 U.S.C. § 1915(e), the Court is required to dismiss a complaint filed in forma pauperis if it is frivolous, malicious, or fails to state a claim upon which relief can be granted. To state a claim for relief under § 1983, a complaint must plead more than "legal conclusions" and "[t]hreadbare recitals of the elements of a cause of action [that are] supported by mere conclusory statements." Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). A plaintiff must demonstrate a plausible claim for relief, which is more than a "mere possibility of misconduct." Id. at 1950-51.

Plaintiff is imprisoned at the St. Louis County Justice Center. Named as defendants are the United States Marshals Service; St. Louis County; the St. Louis County Justice Center (the "Justice Center"); Herbert Bernsen, Director of the Justice Center; Paul Listenberger, Food Service Manager at the Justice Center; Milton Mitchell; other persons known or unknown; and

the United States Secret Service. Plaintiff alleges that he requires a gluten-free diet because he has celiac disease. Gluten is found in wheat, barley, and rye. Cmpl. at 5. Plaintiff says that all of the defendants have conspired to injure him “by serving uncertified items for gluten-free diet, eggs, other items of questionable food and searching, in direct conflict to the noted special diet needs.” Id. Plaintiff has not alleged that he has been given any food containing wheat, barley, or rye. Nor has he alleged that he has suffered any injuries or ill results from the food he has been provided.

The allegations in the complaint are the type of threadbare recitals of a cause of action supported by merely conclusory statements that fail to state a plausible claim under Iqbal. Therefore, the complaint must be dismissed.

Moreover, defendants U.S. Marshals Service and U.S. Secret Service are not proper defendants to support a Bivens claim, and plaintiff has not brought this suit under the Federal Torts Claim Act. The Justice Center is not a suable defendant, see Ketchum v. City of West Memphis, Ark., 974 F.2d 81, 82 (1992), and plaintiff has not alleged that a policy or custom of St. Louis County caused his injuries, Monell v. Dep’t of Social Services, 436 U.S. 658, 690-91 (1978). The individual defendants are sued in their official-capacities only, id., and the complaint lacks allegations showing that they are directly responsible for his injuries, Madewell v. Roberts, 909 F.2d 1203, 1208 (8th Cir. 1990). The complaint fails to state a claim for each of these reasons as well.

For each of these reasons this action is dismissed under 28 U.S.C. § 1915(e).

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis [ECF No. 2] is **GRANTED**.

IT IS FURTHER ORDERED that the plaintiff shall pay an initial filing fee of \$7.67 within thirty (30) days of the date of this Order. Plaintiff is instructed to make his remittance payable to “Clerk, United States District Court,” and to include upon it: (1) his name; (2) his prison registration number; (3) the case number; and (4) that the remittance is for an original proceeding.

IT IS FURTHER ORDERED that this action is **DISMISSED** pursuant to 28 U.S.C. § 1915(e)(2)(B).

An Order of Dismissal will accompany this Memorandum and Order.

Dated this 5th day of March, 2015.

A handwritten signature in cursive script, reading "Henry Edward Autrey", with a long horizontal flourish extending to the right.

HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE